

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM SHORT,

Plaintiff,

Case No. 09-12323

v.

Honorable Patrick J. Duggan

SHERIFF DAN HINES, SGT. WALKER,
LT. CARMONEY, OFFICER WICKHAM,
OFFICER BRITTIN, OFFICER WELTER,
OFFICER KELLENBERGER, RHONDA
SCHULTZ, NANCY YIRKU, JACKIE
COX, MICHAEL BURGESS,
COORDINATED CARE PLLC, and JOHN
DOE,

Defendants.

/

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on March 3, 2011.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

William Short (“Plaintiff”), a state prisoner currently incarcerated at the Florence Crane Correctional Facility, in Coldwater, Michigan, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. On June 23, 2010, Defendants Heyns,¹ Walker, Carmoney, Wickham, Brittin, and Kellenberger filed a motion for dismissal and summary judgment.

¹ The Court notes that the case caption identifies Defendant Heyns as “Dan Hines.”

Plaintiff did not respond to this motion, but on July 15, 2010, filed his own motion for summary judgment against five of these six Defendants. Plaintiff failed to include Defendant Wickham in his motion. On September 13, 2010, Plaintiff sought to amend his motion to include all named defendants in this case. The Court has referred this action to Magistrate Judge Mona K. Majzoub for all pretrial proceedings.

On January 18, 2011, Magistrate Judge Majzoub issued an order granting in part and denying in part Plaintiff's motion to amend. Magistrate Judge Majzoub noted that when Plaintiff made his request, the time for responding to his motion for summary judgment had long since passed, and Defendants had in fact responded to his motion on August 3, 2010. Plaintiff's request was granted only as to Defendant Wickham, who had joined in the response to Plaintiff's motion for summary judgment. Magistrate Judge Majzoub denied Plaintiff's motion to amend as to Defendants Coordinated Care PLLC, Schultz, Yirku, Cox, and Burgess, who had not responded.

On January 28, 2011, Plaintiff filed with this Court an "Appeal of Order Granting Only Part of Plaintiff's Request to Amend His Motion for Summary Judgment" pursuant to Federal Rule of Civil Procedure 72(a). Plaintiff objects to Magistrate Judge Majzoub's order and seeks review of the decision.

Pursuant to 28 U.S.C. § 636(b)(1)(A) and Rule 72(a) of the Federal Rules of Civil Procedure, a magistrate judge's nondispositive pretrial orders shall not be reversed unless they are "clearly erroneous or contrary to law." A magistrate judge's decision on a nondispositive pretrial matter "is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm

conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948). If there are two permissible views of the evidence, a magistrate judge’s choice between them cannot be “clearly erroneous.” *Anderson v. City of Bessemer*, 470 U.S. 564, 574, 105 S. Ct. 1504, 1511 (1985).

The Court finds no clear error in Magistrate Judge Majzoub’s order. The Court is unaware of any authority granting Plaintiff the right to amend his motion long after it was filed. Granting Plaintiff’s request in full would have unduly delayed resolution of the cross-motions for summary judgment in this case. The Court concludes that the partial denial of Plaintiff’s request was appropriate.

Accordingly,

IT IS ORDERED that Plaintiff’s objection to Magistrate Judge Majzoub’s January 18, 2011 Order is rejected and the decision is **AFFIRMED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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Magistrate Judge Mona K. Majzoub

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